

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

HILLSBOROUGH, NORTH, SS.

MARCH 2007

State of New Hampshire v. Michael Addison

No. 07-S-0254

Objection to State's Motion Regarding Scheduling of Non-Capital Trials

Michael K. Addison objects to the State's Motion Regarding Scheduling of Non-Capital Trials, in which it requests that this Court permit it to try Mr. Addison on felony charges stemming from a shooting incident in Manchester and a robbery in Hudson before the capital murder trial. The pretrial publicity attendant to such trials would prejudice Mr. Addison's ability to receive a fair trial not only on the capital murder charge, but on the felony charges themselves. Moreover, the State would suffer no material prejudice if it could not bring Mr. Addison to trial on these charges before the capital murder case.

In this objection, Mr. Addison relies upon his due process right to a fair trial by an impartial and unbiased jury. N.H. Const. pt. I, art. 15; U.S. Const. Amendments V, VI, XIV.

As grounds, Mr. Addison states:

1. He is charged with the capital murder of Manchester Officer Michael Briggs. This incident occurred on October 16, 2006. Trial is scheduled for the fall of 2008.
2. The alleged murder weapon is a silver and black .380 caliber handgun owned by Antoine Bell-Rogers. According to discovery provided thus far, Bell-Rogers kept the alleged murder weapon at the homes of his girlfriends; took it with him on a trip to West Virginia; honed



his shooting skills with it at a firing range in West Virginia; frequently brandished the gun; fired it inside an apartment building about an hour before Officer Briggs was fatally wounded; and fired it into the air at Derryfield Park in Manchester a few hours before the State claims Mr. Addison used it in a robbery in Hudson.

3. Mr. Addison currently faces indictments stemming from two incidents aside from the capital case:

-On October 15, 2006, someone shot a gun toward an apartment building on Edward J. Roy Drive in Manchester. Although, on information and belief, no credible witness claims that Mr. Addison possessed a firearm, a Hillsborough County grand jury returned indictments charging him with reckless conduct and being a felon in possession of a firearm. Bell-Rogers is charged as only an accomplice, even though, according to discovery, he was seen leaving a car with the gun immediately before the shooting.

-On October 11, 2006, a 7-Eleven store in Hudson was robbed, allegedly by two black men. On information and belief, the State's case rests on the testimony of two women, Teresia Shipley and Angela Swist who, themselves, are charged in connection with the robbery, and who gave varying accounts of the incident to investigators. On information and belief, no witness will conclusively establish that Michael Addison ever held a gun that night – the same night that Bell-Rogers allegedly fired a gun into the air at Derryfield Park. Again, Bell-Rogers is charged as merely an accomplice.

4. The State wants to try Mr. Addison on the Manchester reckless conduct and Hudson robbery cases before the capital case, because, according to the State, without convictions on these charges, it may not be able to use the underlying conduct in the mitigation phase of the capital case. The State's motion presumes a lot, since Mr. Addison is presumed innocent of all



charges, and there is no guarantee that it will win convictions in either of the felony cases, or the innocence/guilt phase of the capital case. Moreover, even if he is convicted of something in the felony prosecutions, it may be of lesser charges. In any event, for the following reasons, this Court should rule that the State cannot try the felony cases before the capital case.

Prejudicial Impact on Capital Case Due to Publicity

5. At the status conference on March 9, 2007, this Court expressed its concern that pretrial publicity, if not carefully checked, may interfere with Mr. Addison's ability to receive a fair trial in the capital case. See United States v. Moreno Morales, 815 F.2d 725, 736 (1<sup>st</sup> Cir. 1987) ("Rideau [v. Louisiana] and the other publicity cases involved defendants and crimes which the community could only view with total abhorrence."). Counsel have already addressed this issue in motions that include a recently-filed request to hold pretrial hearings in a different courthouse, in order to reduce the ability of the media to publish photos of Mr. Addison in prison clothes and shackles. See Beck v. Washington, 369 U.S. 541, 556 (1961) (distinguishing "straight news stories" from "invidious [coverage] which would tend to arouse ill will and vindictiveness.").

6. As the record in this case makes clear, the pretrial publicity in this case has already been extensive. For example, the media covered every angle of Mr. Addison's arraignment, which is hardly as substantial, or long, as a felony trial. If the State is permitted to try the felonies before the capital case, the pretrial media coverage will be exceptional – and far more so in Mr. Addison's case than in those of the other alleged participants in these incidents (Bell-Rogers, Shipley, and Swist).<sup>1</sup>

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<sup>1</sup>Obviously, the possibility exists that none of these cases will even go to trial. It is certainly not uncommon for defendants in the position of Swist, Shipley and Bell-Rogers to negotiate pleas in exchange for testimony.



7. In its pleading, the State cites, as persuasive authority, State v. Smart, 136 N.H. 639 (1993). Smart is inapposite, at least in the present context. It dealt with media presence and publicity during trial, rather than before trial. Id. at 653-59. Pamela Smart was not charged with capital murder and did not face highly-publicized felony trials before her murder trial. Thus, the New Hampshire Supreme Court's opinion does not address the issues raised here.

8. The publicity generated by these felony trials presents layers of concern. First, there is the additional volume of publicity, which makes it all the more likely that prospective jurors will see published accounts of the capital case, since no felony trial coverage would be complete without reviewing all that has been written about the capital case. Second, there is the nature of the publicity. Mr. Addison will be portrayed as either a gun-wielding robber, or an out-of-control shooter, in the media's coverage of the felony cases. See United States v. Misla-Aldarondo, Nos. 03-2072 & 04-1424 (1<sup>st</sup> Cir., March 2, 2007)(discussing special impact of inflammatory pretrial publicity on prejudice). On information and belief, he is charged with shooting Officer Briggs with the same gun allegedly used in the felony cases, an allegation which will also be publicized during the trials of those cases. While voir dire may address some concerns about jurors who have been exposed to publicity, it is harder to "unring the bell" with regard to prospective jurors who have been exposed to the particular type of publicity the felony trials will generate.

#### Prejudicial Impact on Felony Cases Due to Publicity

9. Mr. Addison has the same right to a fair trial before an impartial jury on each felony case that he does in the capital case. If the State is correct that it needs adjudications of guilt in these cases to present them in the mitigation phase, then these cases are critically important.

Addison's right to a fair trial in the felony case is jeopardized if these cases are tried before the



capital case.

10. The media have consistently portrayed Michael Addison as the man who shot Officer Briggs. The Union Leader has elected to publish comments from one of this State's most prominent elected officials, an Executive Councilor, indicating to the Executive Director of the Public Defender his belief that Mr. Addison is "guilty as sin" of this crime. See Beck, 369 U.S. at 556 (discussing "invidious articles which would tend to arouse ill will and vindictiveness"). It may thus be impossible to find more than a handful of felony-case jurors who have not been exposed to media accounts of the Briggs murder. In all likelihood, many will not only associate Mr. Addison with that crime, but will, at a minimum, assume he committed it. See Misla-Aldarando, slip op. at 3 ("[W]hen a large percentage of the venire is disqualified, this evidence of prejudice in the community may lead a court to 'properly question the remaining jurors' avowals of impartiality.'")(quoting United States v. Angiulo, 897 F.2d 1169, 11811-82 (1<sup>st</sup> Cir. 1990)). From there, it is not hard to assume that he must have committed the gun-related felonies as well, for purely illegitimate and propensity-based reasons. Accordingly, while the publicity attendant to the felony trials prejudice the capital case, the reverse is also true.<sup>2</sup>

#### Lack of Prejudice to the State or Witnesses

11. The State argues that its ability to seek the death penalty will be impaired if it cannot try the felony cases before the capital case, because it will not have obtained convictions in these cases, and therefore, may not be able to present the evidence at either phase of the capital case.

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<sup>2</sup>If Mr. Addison is convicted of capital murder, this verdict will receive a great deal of publicity, which would, in turn, impair his ability to fairly defend the felony cases thereafter. Frankly, what happens to the felonies after the capital case is not as great a concern as the potential that Mr. Addison will not receive a fair trial on them before the capital case occurs, and that the fruit of the unfair trials will unfairly skew the capital case's mitigation phase.



12. If the State believes evidence underlying the felony cases is admissible, under some theory, at a mitigation phase of the capital prosecution,<sup>3</sup> the State can file a motion contending that it meets whatever evidentiary standard governs the admissibility of such evidence. It is not clear why the State must have full jury trials in these matters in order to seek the admission of evidence. While a pretrial hearing may involve the presentation of some evidence, it is not a full and separate felony trial, and it will not receive the same publicity as a full and separate felony trial. Moreover, its presentation will likely be interwoven with that of several other pretrial issues.

13. To the extent that the complaining witnesses are prejudiced by the delayed presentation of the felonies to a tribunal, this prejudice is slight. None of the primary witnesses is either very young or very old. The same witnesses will likely have to testify in the mitigation phase of the capital case anyway, and that testimony would presumably mirror what they would have said at a felony trial. Finally, any potential for prejudice to these witnesses, which does not merit more than a generic assertion of prejudice in the State's motion, pales in comparison to the potential prejudice to Mr. Addison.

#### Conclusion

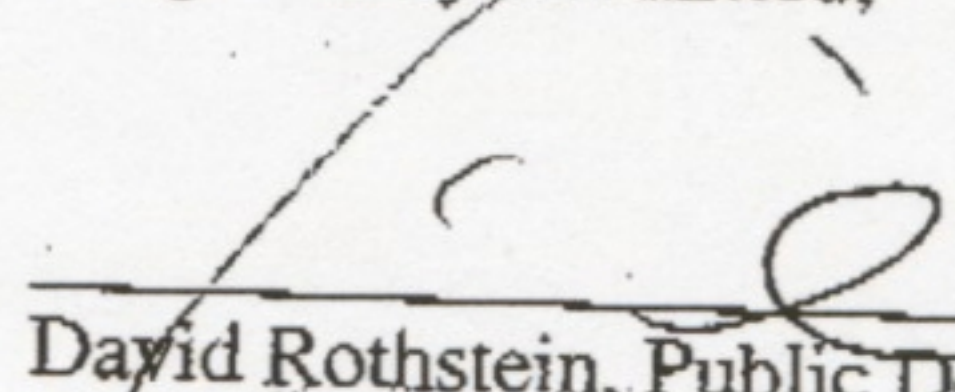
14. For all of these reasons, Mr. Addison seeks an order staying the felony jury trial until after the capital case.

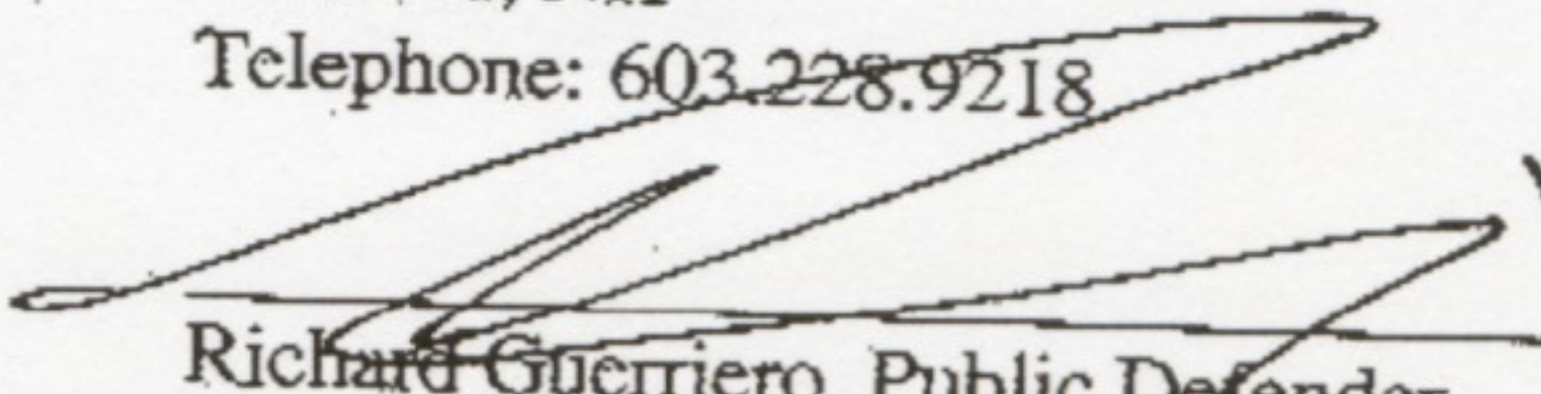
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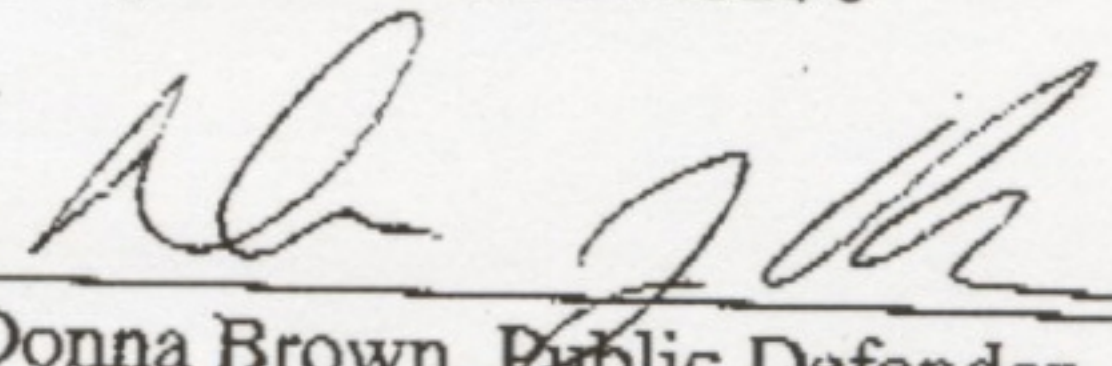
<sup>3</sup>Mr. Addison objects to the admission of the evidence underlying the felonies in either phase of the capital case.



Respectfully submitted,

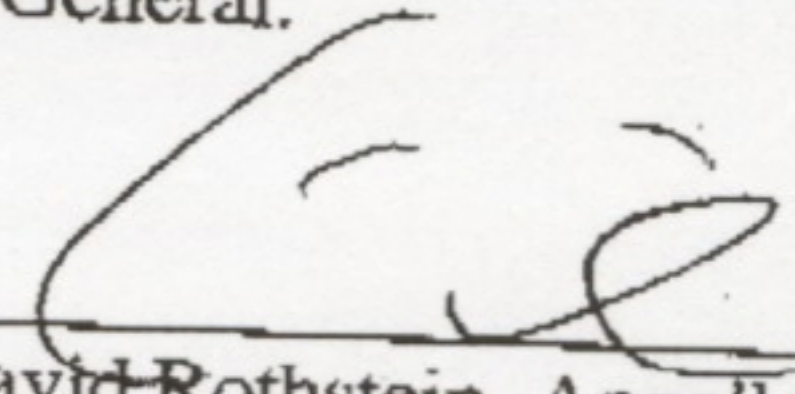
  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was forwarded on this 28 day of March, 2007, to Attorney General, Kelly Ayotte, Senior Assistant Attorney General Jeff Strelzin, Senior Assistant Attorney General Will Delker and Assistant Attorney General Karen Huntress, at the Office of the New Hampshire Attorney General.

  
David Rothstein, Appellate Defender



## THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH NORTH, SS.

MARCH TERM 2007

State of New Hampshire.

v.

Michael Addison

No. 07-S-0254

**STATE'S MOTION TO DISCLOSE GRAND JURY TRANSCRIPTS  
AND USE THEM AT TRIAL**

NOW COMES the State of New Hampshire, by and through its attorney, the Office of the Attorney General, and respectfully requests that this Honorable Court, authorize the disclosure of grand jury transcripts to defense counsel and use the transcripts at trial. In support of this motion, the State says as follows:

1. On or about October 16, 2006, Manchester Police Officer Michael Briggs was shot in the head and died from his injuries. The defendant was subsequently arrested and indicted on one charge of Capital Murder for knowingly shooting Offr. Briggs. Trial in that matter has been scheduled for September 2008.
2. As part of that investigation, witnesses have appeared before the grand jury and given testimony which has been transcribed.
3. The State believes that the transcripts of the grand jury testimony may be necessary to impeach, refresh the witnesses' recollection, or otherwise use at trial. Rule 52(2) requires the State to disclose the entire testimony of the witnesses in order to use them at trial.
4. This Court is also authorized to allow the disclosure of the grand jury transcripts pursuant to Supreme Court Rule 52(6) to the defense counsel. The State believes that the



transcripts of the testimony may contain information that is material either to establish the elements of the charge or the defense in this case and the information may be otherwise unavailable through other reports. See Dennis v. United States, 384 U.S. 855 (1966); Brady v. Maryland, 373 U.S. 83, (1963).

5. The defense assents to the disclosure of the transcripts but reserves the right to object to their use at trial, in depositions or in pretrial hearings, or in any other proceedings related to this case until after the defense has had an opportunity to review them.

WHEREFORE, the Attorney General for the State of New Hampshire respectfully requests, pursuant to Supreme Court Rule 52, that this Honorable Court:


- A. Grant the State's motion and allow it to provide defense counsel with copies of the grand jury transcripts;
- B. Grant the State's motion to be allowed to use the grand jury transcripts at trial; and
- C. Grant such further relief as may be just and proper.

Respectfully submitted,

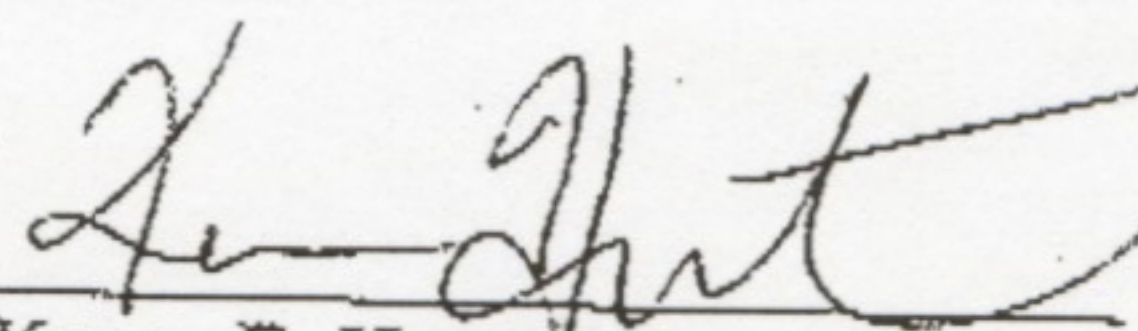
THE STATE OF NEW HAMPSHIRE

By its attorneys,

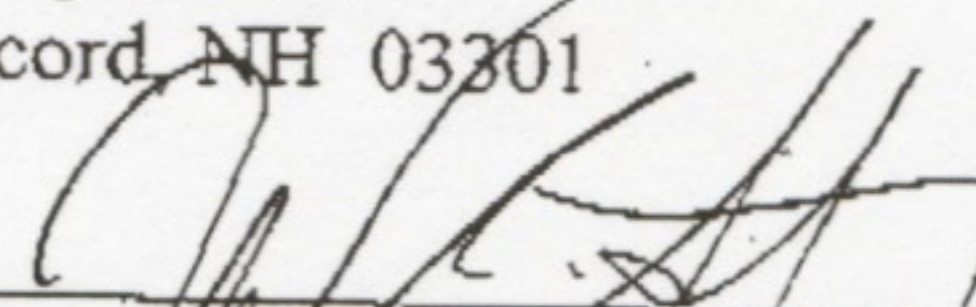
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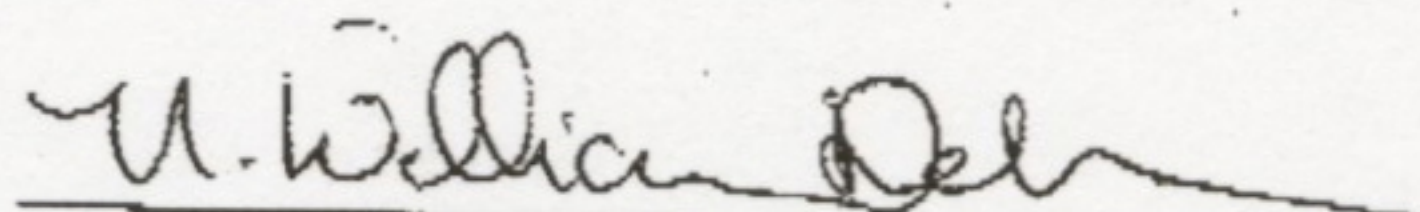


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**CERTIFICATE OF SERVICE**

I certify that a copy of this pleading has been mailed to Richard Guerriero, Esq.,  
David Rothstein, Esq., and Donna Brown, Esq., counsel of record for the defendant.

March 27, 2007



N. William Delker